Remarks

Applicant thanks the Examiner for her review and comments. In response thereto claims have been amended and canceled to narrow the scope of the invention. Applicant believes that the amended claims are not anticipated by U.S. Patent No. 6,587,127 by Leeke et al.

In the amended claims the user no longer "reacts" to items of the base channel. Instead, the user expresses a negative preference and "deletes" an item of content on the base channel. The act of deleting an item of content automatically causes a different item to be substituted and creates a personalized playlist. "The sidechannel playlist may be compiled based on preferences determined by which selections the user has... deleted" (paragraph 9). "But rather than lose a listener by his switching to a competing station, the affiliated station allows the user to delete or move aside the currently unwanted selection" (paragraph 62). "The 'Delete' option removes a selection... A new modified playlist is started with the next selection." (paragraph 66).

The following language has been added to amended claim 1: "the user sends a delete signal for an undesired item playing on the base channel". The deleted item is not removed from the base channel; rather, upon performing a delete function, the user is moved from the base channel onto a side channel where the

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playlist of the base channel continues with a substitute item in the place of the deleted item. The choice of substitute item is guided by "a style of the playlist of the base channel." This is referenced in the disclosure: "...the customizer will reflect that station's style when making substitutions..." (paragraph 82); "the user's device then creates the modified playlist according to the style of the user and/or current station" (paragraph 91). In claim 1 user preference is now expressed solely by the act of deletion. Rather than giving up the base channel entirely a user of the present invention can personalize the base channel. Unwanted selections are absent from the personalized base channel; compatible items are substituted for the unwanted selections.

In Leeke "Presets act as filters... for specific, frequently-used material... Presets may be used to store access to specific content or titles, or may be used to specify sets of titles. For example, a first preset can specify a set of all stations that broadcast jazz, and a second preset can specify all recordings of a particular artist. " (column 10, lines 5-9). Throughout Leeke's disclosure presets function as links to channels, groups of content, and single items of content that stand alone. While presets may act upon other presets, the content accessed via one preset is independent of other preset content. Leeke does not anticipate the use of a preset to delete an item of content or to express a negative preference. As disclosed in Leeke a preset can not be used to create a modified base channel.

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The content of the side channels and of the substitute items of the present invention depend entirely on the base channel and do not stand alone.

Figures 2 and 6 of the present invention show how deleting an item creates a personalized playlist. In figure 2 a user listening to base channel xxKYYY deletes item YC2. Item XC1 is substituted for the deleted item YC2 and side channel My-xx KYYY is created. The side channel is the same as the base channel except that a substitution has been made for item YC2. Figure 6A shows top channel KLOS playing Fleetwood Mac's "Dreams". In 6B we see the creation of MyKLOS where "Dreams" will not play. Deleting the same item from different base channels will result in different side channels; the difference will arise from (at a minimum) differences in the playlists of the base channels, differences in the styles of the base channels and the time availability of substitute items.

In Leeke the user can modify a personal playlist, but this personal playlist is distinct from the playlist of a base channel of the present invention: "items can be added and deleted from the playlist 800. To add an item, the material is selected using the browser, followed by a selection of the save button." (column 25, lines 34-36). Leeke shows playlist 800 in Figure 33 entitled "Dan & Diane's Favorite Tunes". Playlist 800 is constructed by the user wherein the user has actively selected each item in the playlist. Leeke also discloses that a user may use a "playlist smart card". "A playlist smart card is a custom card for an

individual. The playlist smart card is a collection and organization device for content." (column 23 lines 60-63).

In the present invention the playlist of the base channel is "identical for a plurality of users" and is "immediately unchangeable" by a user. Leeke describes a method for deleting items from a personal playlist of known items but does not anticipate deleting an item from a base channel that is unchangeable and shared by multiple users (thereby creating a personalized side channel for a single user).

Claim 1 now refers to "substitute" items rather than "suitable" items. The concept of substitution is a feature of the present invention. When the user deletes one item a new item that has been selected by the customizer automatically plays instead. The first criterion for a substitute item has been changed and now comprises, "a style of the playlist of the base channel." The unique side channel of the present invention is thus derived directly from the common public base channel. Deleting a known item from the base channel causes a non-user selected item to play. However, the unknown item is not random - it is expected to be in the style of the base channel.

As referenced by the Examiner, the function of time availability of alternate content in Leeke comprises a user preference to switch from the base station playlist to a new playlist. However Leeke does not teach that a switching action

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occurs independently from a user's immediate action. In the present invention the customizer, rather than the user, selects alternate programming sources so that the user remains passive (paragraph 33) during the source switching operations. The alternate source of content in Leeke is not required to have relationship with the style or timing of items on the current base station playlist. The present invention requires an item of content to be generally synchronized with items on a base station playlist in both timing and style to be buffered as a potential substitute. When a user of the present invention deletes an item it is not to move to a totally different playlist. Instead it is to stay with a modified version of the current playlist so that that playlist remains mostly unchanged but becomes more palatable.

In response to the previous claim 1 the Examiner states that Leeke discloses, "the first suitable item inherently being unidentified to the user." However, the presets of Leeke are used, "...for specific, frequently-used material," that has been previously selected and specified by the user and "may be used to store access to specific content or titles." (column 10 lines 6-8). Leeke's presets thus constitute items (or channels made from items) known to the user in advance -- with the possible exception of the "mystery preset" (column 28, lines 4-6). Leeke does not provide any details about the function or composition of the mystery preset, except that, like the other presets described by Leeke, it is a selection that is directly chosen by the user because the user has expressed a

positive preference and wants to listen to it. Leeke does not teach that the mystery preset selects a channel as a result of a negative user action, and further does not teach that the mystery preset will maintain a style of a current station. In the present invention a substitute item is played because the user has expressed a negative preference and has chosen to **not** listen to an item on the base channel. As with the other presets described by Leeke, a user of Leeke's "mystery preset" is removed from an ongoing relationship with the base channel.

Leeke's mystery preset might comprise a unique single item of content or an unknown channel. The mystery preset is not required to have any relationship to the style of the base channel. The structure or style of the predetermined playlist of the base channel is lost if a user selects the mystery preset.

In reference to previous claim 1 the Examiner found that the "undesired item is inherently identified by the customizer as not meeting the first criteria" of user preference. In amended claim 1 the user now "sends a delete signal for an undesired item" and the customizer "automatically...creates a side channel comprised of a modification of the base channel wherein the undesired item is absent from the playlist and a substitute item is played instead." The substitute item is "in the style of the base channel". The customizer provides for user preference as a result of the negative action.

As cited by the Examiner Leeke teaches that "a set of attributes or a specific station or title..." can be stored as a preset (column 10 lines 50-53). Leeke lists the following options for attributes: location, time, band, event, author, category, title and artist. Leeke's list of possible attributes for a preset does **not** include the attributes of a substitute item of the present invention - unidentified and in the style of a selected base channel. It is not possible to use Leeke's method to find an unknown substitute item in "style of the playlist of the base channel".

Currently amended claim 2 now refers to "substitute" items. As discussed above substitute items must be in the style of the base channel.

Regarding claim 5 the Examiner finds that "Leeke further discloses an alternate source comprises a hidden playlist... not available for use as a base channel" (column 8, lines 6-11). The complete section cited by the Examiner begins with, "The radio category includes content from over-the-air broadcasts," and ends with, "...includes scheduled broadcasts of... material that is made available... at a scheduled time." (column 8, lines 3-12). The applicant respectfully submits that the alternate sources referred to by Leeke in this passage do not meet the definition of "hidden" where, in the present invention, the hidden playlist is not..." accessible as a regular channel[s]" and "available only is a result of a modify action"(paragraph 71).

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Claim 5 has been further limited so that the playlist of the hidden channel is in the style of the base station and its primary function is to provide substitute items for modification of the base channel.

In claim 6 the term "undesired items" has been amended to "deleted items".

In amended claim 9 the present invention uses negative user preferences to construct a personal playlist derived from the base channel. Use of user profile information is referenced in the disclosure as follows: "Each time a user modifies a playlist the modify action may be coupled with the user's ID (and/or user device ID) to create a programming reference item in a user profile maintained by the customizer or station." (paragraph 82).

Amended claim 10 adds the limitation of a hidden channel in the style of the base station. A further limitation is that an undeleted item played on the side channel is played in the same sequence as such item being played on the base channel. Figure 2 shows that the undeleted items played on the side channel are in the same sequence as on the base channel. On the side channel substitute items fill in for the deleted items.

Amended claim 14 incorporates limitations discussed previously.

Amended claim 15 now specifies that the opportunity value payment is made to the provider of the substitute item by the station that borrows the substitute item to provide a personalized channel derived from borrowing station's base channel.

Amended claim 16 includes a limitation that the customizer operates independently of the user's immediate actions. Amended claim 16 is not anticipated by Leeke since Leeke teaches only that a source switching action occurs as a user choice through direct and immediate user action.

Amended claim 17 adds the limitation that a network operator monitors the sharing of playlists by cooperative stations. This is referenced in the disclosure: "The network operator may oversee that cooperative stations are sharing the burden similarly" (paragraph 78).

Amended claim 18 now specifies that the customizer is guided by a user's deletions.

Amended claim 20 incorporates limitations discussed previously.

New claim 23 and new claim 25 describe creation of alternate playlists for immediate use when a user rejects an item. This is described in paragraph 63 of the disclosure.

New claims 26 and 27 are respectfully submitted.

With the present invention the user does not need to change channels or input preferences in advance of listening to create a personalized playlist. Instead, in real time, the user simply deletes items that are not liked. For each item being played the customizer anticipates the possibility of a deletion and prepares (buffers) a substitute to begin playing immediately if the user hits the delete button. If the user performs a delete action a new playlist is automatically created that does not include the deleted item and includes the addition of a substitute item. The substitute item may come from an unknown to the user or hidden playlist. The user does not directly select the content of the substitute item. Rather the customizer selects substitute content based on time availability, style and content preferences that may be determined by the provider of the base channel or the network operator. During later listening sessions the modified playlist, or side channel, remains available where the customizer has stored relevant previous user actions and continues to select items to substitute in a base cannel.

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Leeke does not provide a method for deleting an item from a base station playlist or for creating a personalized side channel that is derived from the base channel by means of expressing negative preferences.

The side channels of the present invention are non-specific: the playlist is unknown to the user until it has played; likewise, a substitute item is also unknown to the user until it has played. The second criterion for a substitute item is "time availability... provided by alternate sources." The substitute item may vary depending on the playlist schedules of both the base channel and the alternate source(s). The source of the substitute items is not selected by the user. Imporantly a switching action required to select an alternate source of a program item is not initiated nor directly controlled by the user. According to Leeke the user must direct the switching action.

The personal playlist of the present invention is derived from a given base channel: for each unique base channel a unique personal playlist will evolve through cumulative deletions.

In view of the foregoing, Applicant respectfully submits that all claims are now in condition for allowance. Reexamination and reconsideration of the application are requested and allowance at an early date is solicited.

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Respectfully submitted,

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